



This document is scheduled to be published in the Federal Register on 12/30/2014 and available online at <http://federalregister.gov/a/2014-30417>, and on [FDsys.gov](http://FDsys.gov)

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 6**

[FAR Case 2014-020; Docket No. 2014-0020; Sequence No. 1]

**RIN: 9000-AM86**

**Federal Acquisition Regulation; Clarification on  
Justification for Urgent Noncompetitive Awards Exceeding  
One Year**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify that a determination of exceptional circumstances is needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds one year, either at time of award or due to post-award modifications.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[Insert 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2014-020 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2014-020". Select the link "Comment Now" that corresponds with "FAR Case 2014-020". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2014-020" on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, N.W., 2<sup>nd</sup> Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014-020, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949, for clarification of content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2014-020.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are revising the FAR in response to a Government Accountability Office (GAO) report, GAO-14-304, Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight, dated March 2014. On October 14, 2009, the FAR was amended to implement section 862 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-417) which restricted the length of contracts awarded noncompetitively under unusual and compelling urgency circumstances. Such contracts may not exceed one year unless the head of the executive agency determines that exceptional circumstances apply.

GAO found that agencies did not make the required determination for the ten contracts in GAO's sample that had a period of performance of more than one year. As a result, GAO recommended that DoD, U.S. Department of State and U.S. Agency for International Development provide guidance to improve data reliability and oversight for contracts awarded using the urgency exception. Additionally, GAO recommended that the Director of the

Office of Management and Budget, through the Office of Federal Procurement Policy, provide guidance to clarify when determinations of exceptional circumstances are needed when a noncompetitive contract awarded on the basis of unusual and compelling urgency exceeds one year, either at the time of award or because it was modified after contract award.

This rule clarifies that a determination of exceptional circumstances is needed whenever the period of performance of a noncompetitive contract awarded on the basis of unusual and compelling urgency is extended beyond a year.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866,

Regulatory Planning and Review, dated September 30, 1993.

This rule is not a major rule under 5 U.S.C. 804.

### **III. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it only clarifies when determination of exceptional circumstances is needed. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The purpose of this rule is to clarify that a determination of exceptional circumstances is needed when the period of performance, inclusive of options and modifications, of a noncompetitive contract awarded on the basis of unusual and compelling urgency is greater than one year. This rule only impacts the internal procedures of the Federal government.

There are no recordkeeping, reporting, or other compliance requirements associated with the proposed rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014-020), in correspondence.

#### **IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subject in 48 CFR Part 6**

Government procurement.

Dated: December 22, 2014.

William Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 6 as set forth below:

**PART 6—COMPETITION REQUIREMENTS**

1. The authority citation for 48 CFR part 6 continues to read as follows:

**AUTHORITY:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 6.302-2 by—

- a. Revising paragraph (d)(1)(ii);
- b. Redesignating paragraphs (d)(2) through (d)(4) as paragraphs (d)(3) through (d)(5), respectively;
- c. Adding a new paragraph (d)(2); and
- d. Revising newly redesignated paragraph (d)(3).

The revised and added text reads as follows:

**6.302-2 Unusual and compelling urgency.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) May not exceed one year, including all options, unless the head of the agency entering into the contract determines that exceptional circumstances apply. This determination must be documented in the contract file.

(2)(i) A separate determination shall be made when executing any modification or option that extends the

period of performance beyond one year. This requirement does not apply to the exercise of options previously addressed in the determination required at (d)(1)(ii) of this section. Any subsequent extension requires a new determination.

(ii) The determination shall be approved at the same level as the level to which the agency head authority in (d)(1)(ii) of this section is delegated.

(3) The requirements in paragraphs (d)(1) and (d)(2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

\* \* \* \* \*

[BILLING CODE 6820-EP]

[FR Doc. 2014-30417 Filed 12/29/2014 at 8:45 am; Publication Date:  
12/30/2014]